

OCT 23 2007

IMPORTANT CONFIDENTIALITY NOTICE

The documents accompanying this telecopy transmission contain confidential information belonging to the sender which is legally protected. The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone (collect) to arrange for return of the telecopied document to us.

TO: Jessica Lee Ward, Art Unit 1733 - United States Patent and Trademark Office

Fax No. 571-273-8300

Phone No. 571-272-1223

FROM: Diane Robinson (Typed or printed name of person signing Certificate)

Fax No. 513-634-6108

Phone No. 513-634-2477

Application No.: 10/780,846

Inventor(s): Shaun Thomas Broering

Filed: February 18, 2004

Docket No.: 9527L\$

Confirmation No.: 2517

FACSIMILE TRANSMITTAL SHEET AND
CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on October 23, 2007, to the above-identified facsimile number.

 (Signature)

Listed below are the item(s) being submitted with this Certificate of Transmission:**

- 1) Appeal Brief (13 pages)

Number of Pages Including this Page: 14

Comments:

****Note:** Each paper must have its own certificate of transmission, OR this certificate must identify each submitted paper.

RECEIVED
CENTRAL FAX CENTER
OCT 23 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/780,846
Inventor(s) : Shaun Thomas Broering
Filed : February 18, 2004
Art Unit : 1733
Examiner : Jessica Lee Ward
Docket No. : 9527L
Confirmation No. : 2517
Customer No. : 27752
Title : Method and Apparatus for Making Flexible Articles
Having Elastic-Like behavior with Visually Distinct
Regions

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on May 23, 2007.

A timely Notice of Appeal was filed on August 23, 2007.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1-20 are rejected.

The rejections of claims 1-20 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER

OCT 23 2007

STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

As provided in claim 1, the invention comprises a method of making an article having elastic like behavior. A sheet of web material is introduced. At least a portion of the sheet is overlapped upon itself, as in a c folded sheet. As it is a sheet of material, the edges of the material are free to move. The overlapped portion of the sheet is formed into a strainable network. The strainable network includes a plurality of un-deformed first regions and a plurality of deformed second regions. The second regions are formed into disengagable pleat elements. The pleat elements are disengaged using a disengaging means. The disclosed structure of the disengaging means includes a static opening bar, a dynamic opening bar, and air knife, and a suction means. The structures associated with the suction means include: a vacuum source coupled with apertures in the teeth of at least one forming roller, a set of opposing plenums each plenum coupled to a vacuum source as described and illustrated in paragraphs 27-45, and figures: 6, all; 7, items 201, 203, 205; 8, all; 9 all; 10, items 206, 208, 219, and 220; 11, all; 12, all; 13, items 206, 208, 219, and 220; 14, all; 15, all; 16, all but 52, and 53; 17, all; and 18, item 579. Support for the limitations of this claim may be found in the specification at paragraphs 6, and 27-45, and figures 2-18 inclusive.

As provided in claim 20, the invention comprises a method for forming an article having elastic-like behavior. A sheet of material having at least one overlapped portion, such as a sheet folded upon itself in a c shaped configuration, is introduced. The overlapped portion is formed into at least one region of disengagable pleat elements. The pleat elements are disengaged using a disengaging means selected from an air knife, a static opening bar, a dynamic opening bar, and suction means. The structures of the air knife, static opening bar, dynamic opening bar are set forth in paragraphs 27-45, and figures 6 all; 7, items 201, 203, 205; 8, all; 9 all; 10, 206, 208, 219, and 220; 11, all; 12, all; 13, 206, 208, 219, and 220; 14, all; 15, all; 16, all but 52, and 53; 17, all; and 18, 579. Support for the subject matter of this claim may be found in paragraphs 6, and 27-45, and in figures 2-18 inclusive.

Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

RECEIVED
CENTRAL FAX CENTER
OCT 23 2007

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1, 3, 12-14, 16 and 18 are rejected under 35 USC §102(b) as anticipated by Bustin (GB 1301198).
2. Claims 2, 4, 10 and 20 are rejected under 35 USC §103(a) as unpatentable over Bustin in view of Cronauer (US 5,709, 069).
3. Claims 2, 4-9, 10-11, 17, and 19-20 are rejected under 35 USC §103(a) as unpatentable over Bustin in view of Rowe, et al., (US 2, 615, 375), or LaFleur, et al., (US 4,481,006), or Yisha, et al., (US 5,956,929), or the collaborative teachings of Hiramoto, et al., (US 6,446,684), Henaux, (US 5,845,463), Adelman, (US 5,564,252), and Muller, (US 5,279,095).
4. Claim 13 is rejected under 35 USC §103(a) as unpatentable over Bustin in view of Meyer, et al., (US 6,394,652).
5. Claims 1, 3, 12-16, and 18-19 are rejected under 35 USC §103(a) as unpatentable over Meyer in view of Bustin or in the alternative, Bustin in view of Meyer.
6. Claims 2, 4, 10, and 20 are rejected under 35 USC §103(a) as unpatentable over Meyer and Bustin, or Bustin and Meyer, in view of Cronauer.
7. Claims 2, 4-9, 10-11, 17, and 19-20 stand rejected under 35 USC §103(a) as being unpatentable over Meyer and Bustin, or Bustin and Meyer, in view of Rowe, et al., or LaFleur, et al., or Yisha, et al., or the collaborative teachings of Hiramoto, et al., Henaux, Adelman, and Muller.

Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

ARGUMENTS

1. The rejection of Claims 1, 3, 12-14, 16 and 18 are rejected under 35 USC §102(b) as anticipated by Bustin (GB 1301198) is appealed.

To anticipate the claims, the reference must expressly or inherently describe all claimed limitations. See: *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Inherency requires that the limitation necessarily be present in structures described by the cited reference. See: *Continental Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1268-69, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

Appellant claims a method for separating an overlapped sheet of material. Bustin does not teach or suggest a method for separating a sheet of material. Bustin relates to a continuous tube of material. It is presumptuous to provide that the dynamics of a tube are relevant and applicable to the dynamics of a sheet. It is analogous to the presumption that a method for the inflation of a balloon may successfully be applied to the inflation of a folded sheet of latex film.

Appellant claims the formation of a strainable network. Bustin does not teach the formation of a strainable network. Neither is the formation of a strainable network the necessary result of the methods disclosed in the reference. There is no support provided for the contention that all embossed films are necessarily strainable in nature.

Bustin does not teach or suggest the separation of a sheet of material, or the production of a strainable network. The reference does not anticipate the invention as set forth in the independent claims. The rejection under 35 USC §102(b) should be overturned.

2. The rejection of claims 2, 4, 10 and 20 under 35 USC §103(a) as unpatentable over Bustin in view of Croanuer (US 5,709, 069) is appealed.

Claims which depend from allowable independent claims are also allowable. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

Support for a *prima facie* case of obviousness under 35 USC §103(a) requires in part that the cited references teach or suggest each of the limitations as set forth in the claims. *In re Royka*, 490 F 2d 981, 180 USPQ 580.

The Examiner has failed to establish a *prima facie* case of obviousness as the combination of references fails to teach or suggest each of the limitations of the inventions as claimed. Neither Bustin nor Cronauer teaches or suggests the separation of a sheet of material overlapped upon itself. Bustin relates to a continuous tube and Cronauer to a formed bag. A *prima facie* case of obviousness has not been established. This rejection should be overturned.

3. The rejection of claims 2, 4-9, 10-11, 17, and 19-20 under 35 USC §103(a) as unpatentable over Bustin in view of Rowe, et al., (US 2, 615, 375), or LaFleur, et al., (US 4,481,006), or Yisha, et al., (US 5,956,929), or the collaborative teachings of Hiramoto, et al., (US 6,446,684), Henaux, (US 5,845,463), Adelman, (US 5,564,252), and Muller, (US 5,279,095) is appealed.

Claims which depend from allowable independent claims are also allowable. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Support for a *prima facie* case of obviousness under 35 USC §103(a) requires in part that the cited references teach or suggest each of the limitations as set forth in the claims. *In re Royka*, 490 F 2d 981, 180 USPQ 580.

The Examiner has failed to establish a *prima facie* case of obviousness as the cited combinations of references fail to teach or suggest each of the limitations of the inventions as claimed. None of the cited combinations of references overcomes the basic flaw that begins with the Bustin reference and its failure to relate to the dynamics of a system represented by an overlapped sheet. The combinations cited each fail to disclose all of the limitations of the invention as set forth in the claims. This rejection under 35 USC §103(a) should be overturned.

Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

4. The rejection of claim 13 under 35 USC §103(a) as unpatentable over Bustin in view of Meyer, et al., (US 6,394,652), is appealed.

Claims which depend from allowable independent claims are also allowable. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Support for a *prima facie* case of obviousness under 35 USC §103(a) requires in part that there is a reasonable expectation of success in making the combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner seeks to combine the teachings of Bustin with regard to the inflation and separation of a continuous tube of material with sheet materials of Meyer. This is akin to applying methods for pressurizing a closed pipe with pressurizing a flat plate of material. The methods may not be presumed to be applicable to the other application. Methods for separating a tube may not be presumed to be applicable to separating a sheet. There is no reasonable expectation of success in making the cited combination of references. A *prima facie* case of obviousness under 35 USC §103(a) has not been established and this rejection should be overturned.

5. The rejection of claims 1, 3, 12-16, and 18-19 under 35 USC §103(a) as unpatentable over Meyer in view of Bustin or in the alternative, Bustin in view of Meyer is appealed.

Claims which depend from allowable independent claims are also allowable. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Support for a *prima facie* case of obviousness under 35 USC §103(a) requires in part that there is a reasonable expectation of success in making the combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner seeks to combine the teachings of Bustin with regard to the inflation and separation of a continuous tube of material with sheet materials of Meyer. The methods of Bustin may not be presumed to be applicable to dynamics of a dissimilar system. Methods for separating a tube may not be presumed to be applicable to separating a sheet. There is no reasonable expectation of success in making the cited combination of references.

Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

Reversing the order in which the references are combined does nothing to create a expectation of success in combining a method for inflating a tube with a process for handling a sheet. A *prima facie* case of obviousness under 35 USC §103(a) has not been established and this rejection should be overturned.

6. The rejection of claim 2, 4, 10, and 20 under 35 USC §103(a) as unpatentable over Meyer and Bustin, or Bustin and Meyer, in view of Cronauer is appealed.

Support for a *prima facie* case of obviousness under 35 USC §103(a) requires in part that there is a reasonable expectation of success in making the combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner seeks to combine the teachings of Bustin with regard to the inflation and separation of a continuous tube of material with sheet materials of Meyer. The methods of Bustin may not be presumed to be applicable to dynamics of a dissimilar system. Methods for separating a tube may not be presumed to be applicable to separating a sheet. There is no reasonable expectation of success in making the cited combination of references. Reversing the order in which the references are combined does nothing to create a expectation of success in combining a method for inflating a tube with a process for handling a sheet. The addition of the Cronauer reference does not cure the basic faults of the underlying Bustin - Meyer combination. A *prima facie* case of obviousness under 35 USC §103(a) has not been established and this rejection should be overturned.

7. The rejection of claims 2, 4-9, 10-11, 17, and 19-20 under 35 USC §103(a) as being unpatentable over Meyer and Bustin, or Bustin and Meyer, in view of Rowe, et al., or LaFleur, et al., or Yisha, et al., or the collaborative teachings of Hiramoto, et al., Henaux, Adelman, and Muller is appealed.

Support for a *prima facie* case of obviousness under 35 USC §103(a) requires in part that there is a reasonable expectation of success in making the combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner

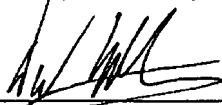
Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

seeks to combine the teachings of Bustin with regard to the inflation and separation of a continuous tube of material with sheet materials of Meyer. The methods of Bustin may not be presumed to be applicable to dynamics of a dissimilar system. Methods for separating a tube may not be presumed to be applicable to separating a sheet. There is no reasonable expectation of success in making the cited combination of references. Reversing the order in which the references are combined does nothing to create a expectation of success in combining a method for inflating a tube with a process for handling a sheet. The addition of the Rowe, et al., or LaFleur, et al., or Yisha, et al., or the collaborative teachings of Hiramoto, et al., Henaux, Adelman, and Muller references do not cure the basic faults of the underlying Bustin - Meyer combination. A *prima facie* case of obviousness under 35 USC §103(a) has not been established and this rejection should be overturned.

SUMMARY

In view of all of the above, it is respectfully submitted that Bustin does not anticipate the invention as claimed, and that a *prima facie* of obviousness has not been properly established or supported under any of the cited combinations of references. Each of the rejections of the claims should be overturned.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY



Signature

David K. Mattheis

Typed or printed name
Registration No. 48,683
(513) 634-9359

Date: October 23, 2007

Customer No. 27752

Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

CLAIMS APPENDIX

1. A method of making an article having elastic-like behavior comprising the steps of:

Introducing a sheet material having at least one overlapped portion;

Forming said overlapped portion of sheet material into a strainable network including a plurality of first regions and a plurality of second regions, said first regions being substantially un-deformed and said second regions being formed into disengagable pleat elements; and

Disengaging said pleat elements using a disengaging means.

2. The method of making an article according to claim 1, wherein said disengaging means is selected from the group consisting of air knife, static opening bar, dynamic opening bar, and suction means, and any combinations thereof.

3. The method of making an article according to claim 1, further comprising the step of overlapping one portion of sheet material over another portion of sheet material.

4. The method of making an article according to claim 2, further comprising the step of separating said overlapped portions of said sheet material using said disengaging means.

5. The method of making an article according to claim 2, wherein said dynamic opening bar comprises at least one first set of rollers and said pleat elements are disengaged from each other while at least one portion of said sheet material rides over an opposite outer segment of at least one roller.

6. The method of making an article according to claim 5, wherein said dynamic opening bar includes an end cap.

Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

7. The method of making an article according to claim 5, wherein said dynamic opening bar is wholly surrounded by said overlapped portions of said sheet material.

8. The method of making an article according to claim 5, wherein said dynamic opening bar comprises a second set of rollers and said pleat elements remain engaged as said sheet material passes between a first set of rollers and thereafter said pleat elements are disengaged while at least a portion of said sheet material is riding over at least one opposite outer segment of a second set of rollers.

9. The method of making an article according to claim 1, wherein said disengaging step further comprising riding said sheet material on said disengaging means.

10. The method of making an article according to claim 2, wherein the step of forming further comprises forming said pleat elements as said sheet material passes between a pair of forming rollers, at least one forming roller having toothed regions and grooved regions.

11. The method of making an article according to claim 2, wherein said disengaging step further comprises the step of applying a vacuum to at least one overlapped portion of said sheet material.

12. The method of making an article according to claim 1, further comprising the step of winding said sheet material onto a roll.

13. The method of making an article according to claim 1, further comprising the step of incorporating a closure means into said sheet material.

Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

14. The method of making an article according to claim 1, further comprising the step of unwinding a continuous web of sheet material from a roll.

15. The method of making an article according to claim 1, further comprising the steps of extruding a raw plastic material and converting the extruded plastic material into a continuous web of sheet material.

16. The method of making an article according to claim 1, further comprising the step of forming flexible bags from said sheet material.

17. The method of making an article according to claim 16, further comprising the step of sealing at least one edge of said flexible bag, and severing said sheet material across a width thereof at said sealed edge to separate said sheet material into individual flexible bags.

18. The method of making an article according to claim 16, further comprising the step of sealing at least one edge of said flexible bag, and perforating said sheet material across a width thereof at said sealed edge.

19. The method of making an article according to claim 18, further comprising the step of interleaving said individual flexible bags.

20. A method of making an article having elastic-like behavior comprising the steps of:

Introducing at least one sheet material having at least one overlapped portion;

Forming said overlapped portion of sheet material into at least one region of disengagable pleat elements; and disengaging said pleat elements using a disengaging means selected from the group consisting of air knife, static opening bar, dynamic opening bar, and suction means, and any combinations thereof.

Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

EVIDENCE APPENDIX

None.

Appl. No. 10/780,846
Docket No. 9527L
Appeal Brief dated October 23, 2007
Reply to Office Action mailed on May 23, 2007
Customer No. 27752

RELATED PROCEEDINGS APPENDIX

None.